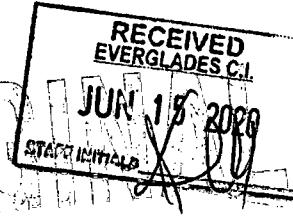


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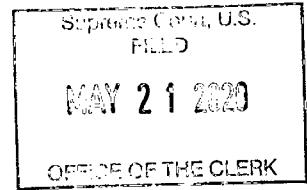
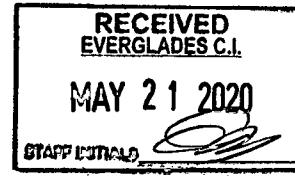


IN THE SUPREME COURT
OF THE UNITED STATES

EDDIE MONTERO,
Petitioner,

v.

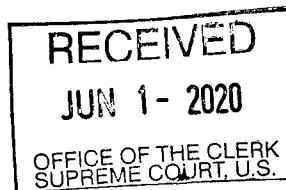
MARK INCH
SEC. FLORIDA DEPT. OF CORRECTIONS
Respondent.



On Writ of Certiorari to the United States
Court of Appeals for the Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

Eddie Montero # 194753
Everglades Correctional Inst.
1599 S.W. 187 Ave.
Miami, Florida 33194



May 12/5/ 2020

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QUESTION PRESENTED

WHETHER A NEW INTERVENING JUDGMENT AND SENTENCE RESTARTS THE ONE YEAR STATUE OF LIMITATIONS FOR HABEAS CORPUS PETITIONS FILED BY STATE PRISONERS?

QUESTION PRESENTED

WHETHER PETITIONER'S RIGHT TO EQUAL PROTECTION AND DUE PROCESS GUARANTEED BY THE FOURTEENTH AMENDMENT WAS VIOLATED WHEN THE PRINCIPLE THAT "SIMILARLY SITUATED DEFENDANTS" MUST BE TREATED THE SAME?¹

¹ *Griffin v. Kentucky*, 479 U.S. 314 (1987)

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from **Federal Courts**:

The opinion of the United States court of appeals appears at Appendix A – L to the petition and is

reported at 785 Fed. Appex. 832, 2019 U.S. App. LEXIS; 35677 (11th Cir. 2019). or,

has been designated for publication but is not yet reported; or,
[] is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

reported at 2017 U.S. Dist. LEXIS 212614 (S.D. Fla. Dec. 22, 2017) or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

For cases from **State Courts**:

The opinion of the highest state court to review the merits appears at Appendix to the petition and is

[] reported at N/A; or,

[] has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the Sixth Judicial Circuit Court appears at Appendix A to the petition and is

[] reported at 17th Judicial Circuit; or,

[] has been designated for publication but is not yet reported; or,
 is unpublished.

INTRODUCTION

The Writ of Habeas Corpus affords prisoners, including those convicted in State Court, the critical opportunity to petition the Federal Courts to challenge the legality of their ongoing detention. When in AEDPA, “Congress codified new rules governing this previously judicially managed area of law, it did so without losing sight of the fact that the ‘Writ of Habeas Corpus plays a vital role in protecting constitutional rights.’” *Holland v. Florida*, 130 S. Ct. 2529, 2562 (2010)(quoting *Slack v. McDaniel*, 529 U.S. 473, 483 (2000)). The important function that the Great Writ serves in ensuring the respect of constitutional rights in our judicial system, including vindicating the claims of the innocent, should inform the Court’s resolution of each question presented.

PETITION FOR WRIT OF CERTIORARI

Petitioner, Eddie Montero, respectfully petitions this Honorable Court for a Writ of Certiorari to review the order of the United States Court of Appeals for the Eleventh Circuit denying a Certificate of Appealability (“COA”) on Petitioner’s constitutional claims, denying him due process, denying him equal protection and granting a “COA” on the procedural issue that was defective, where the “COA” that was granted failed to contain a constitutional issue. Petitioner’s Habeas Petition dismissal was affirmed as untimely as the Circuit Court failed to address Petitioner’s new intervening judgment and sentence that Petitioner asserts re-started the one-year Statute of Limitations for Habeas Corpus Petitions filed by a State prisoner.²

² See Appendix L

JURISDICTION

For cases from federal courts:

The date on which the United States Court of Appeals decided my case was Feb. 29th, 2020.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: April 17th, 2020, and a copy of the order denying rehearing appears at Appendix N.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. _____.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

For cases from **State Courts**:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application A _____.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

RELEVANT PROVISIONS

This case involves a State criminal defendant's constitutional rights under the Sixth and Fourteenth Amendments, and is governed by the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), codified in relevant part at 28 U.S.C. § 2254.

The Sixth Amendment to the United States Constitution provides:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and District wherein the crime shall have been committed, which District shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation: to be confronted with the witnesses against him: to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

The Fourteenth Amendment to the United States Constitution provide in pertinent part:

...nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

This case also involves the application of 28 U.S.C. § 2253(c), which states:

- (1) Unless a Circuit Justice or Judge issues a Certificate of Appealability, an appeal may not be taken to the Court of Appeals from –
 - (A) The final Order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State Court; ...

(2) A Certificate of Appealability may be issued under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

STATEMENT OF THE CASE

Petitioner, Eddie Montero was charged and convicted by a jury of first degree murder pursuant to Section 782.04(1), robbery with a firearm pursuant to Section 812.13(1) and (2), burglary of a structure while armed pursuant to Section 810.02(1) and (2).

Petitioner was sentenced to natural life sentences running concurrent with each other.

STATEMENT OF THE FACTS AND PROCEDURAL HISTORY

Petitioner, Eddie Montero after being convicted and sentenced:

- Petitioner filed for direct appeal in State Court, but the convictions and sentence were per curiam affirmed on July 7th, 1999.
- The mandate was issued on July 23rd, 1999, no further appeal was taken and Petitioner's conviction and sentences became final on October 5th, 1999.
- On April 3rd, 2001, via privately retained counsel, filed postconviction relief raising 16 grounds of alleged ineffective assistance of trial counsel, such motion was denied without a evidentiary hearing.
- Petitioner appealed to the Fourth Circuit Court of Appeal, but the trial Court's order was per curiam affirmed on April 30th, 2003.
- On November 9th, 2017, Petitioner filed a Motion to Correct Illegal Sentence, arguing amongst other things, that the three-year minimum mandatory portions of his sentence was illegal. The trial Court denied the Motion but granted that the three-year minimum mandatory was in fact illegal and amended Petitioner's judgment and sentence deleting the three-year minimum mandatory.
- On December 12th, 2017, Petitioner petitioned the Southern District of Florida for Federal habeas relief in case number 17-cv-62447-FAM. Petitioner argued several points of alleged trial Court error.

- On December 27th, 2017, the Magistrate Judge recommended the petition be dismissed with prejudice because it was untimely as the AEDPA one-year Statute of Limitations had expired prior to its being filed. Petitioner filed objections to the Magistrate Judge’s Report and Recommendation arguing his petition was timely due to the intervening judgment issued by the trial Court’s Order on the Motion to Correct Illegal Sentence. Subsequently, the District Court Judge adopted the Magistrate Judge’s Report and Recommendation and dismissed the petition with prejudice as time barred specifically indicating that the entire record had been reviewed.
- Petitioner filed application for Certificate of Appealability to the 11th Circuit Court of Appeals.
- The 11th Circuit Court of Appeals granted COA to the following issue:

Whether the District Court erred in *sua sponte* determining that [Mr.] Montero’s 28 U.S.C. § 2254 Petition was time barred without reviewing the complete, official State Court record?
- On November 26, 2019, the 11th Circuit Court of Appeals reversed and remanded Petitioner’s Habeas Corpus Petition § 2254 holding “We conclude that the District Court acted within its discretion in taking Judicial Notice of Mr. Montero’s State Court docket, but erred in *sua sponte* dismissing the petition without obtaining a response from the State.”

- On November 26, 2019, the Respondent filed Motion for Rehearing, Motion to Stay to this Court’s reverse order of dismissal and remand for further proceedings.
- On December 3, 2019, the 11th Circuit Court of Appeals granted Respondent’s Motion to Stay this appeal pending the issuance of the Mandate in case 16-15705 *Rolando Paez v. Secretary, Florida Department of Corrections*.
- On January 7th, 2020, the 11th Circuit Court of Appeals addressed whether a District Court could “on its own initiate and without hearing from the State, decide that the Statute of Limitations bars [a habeas] petition.” *Paez v. Sec'y Fla. Dep't of Corr.*, NO. 16-15705, 2020 WL 6320, *1 (11th Cir. Jan 7, 2020) The 11th Circuit Court of Appeals answered that question affirmatively.
- On February 20, 2020, the 11th Circuit Court of Appeals based on its ruling in *Paez*, reversed its Order in Petitioner’s case and affirmed the District Court’s discretion in dismissing Petitioner’s petition as untimely.
- Writ of Certiorari to the United States Supreme Court now follows:

REASONS FOR GRANTING WRIT

QUESTION PRESENTED

WHETHER A NEW INTERVENING JUDGMENT AND SENTENCE RESTARTS THE ONE YEAR STATUE OF LIMITATIONS FOR HABEAS CORPUS PETITIONS FILED BY STATE PRISONERS?

In AEDPA, Congress expressly allowed a State prisoner a full year within which to file a Petition for Writ of Habeas Corpus, beginning on the “latest of” separately enumerated potentially triggering events. 28 U.S.C. § 2244(d)(1) amongst the possible triggering events, Petitioner filed a 3.800(a) “Motion to Correct Illegal Sentence,” which the State Court granting in part as to the three-year minimum mandatory was illegally applied to Petitioner’s sentence. Thus, the three-year minimum mandatory was deleted from the Judgment and Sentence. A new Judgment was entered reflecting the deletion of the three-year minimum mandatory and the remaining part of the sentence stayed intact.

Petitioner’s reliance on *Insignares v. Sec’y Fla. Dept. of Corr.*, 755 F. 3d 1273 (11th Cir. 2014) and this Court’s holding in *Magwood v. Patterson*, 561 U.S. 320 (2010) relates to “Second and Successive” petitions where new Judgments been entered after the one-year Statue of Limitations has expired. See *Insignares*, 755 F. 3d at 1281 (“When a habeas petition is the first to challenge a new Judgment, it is not second or successive, regardless of whether its claims challenge the sentence or the underlying conviction.”) (internal quotations omitted)

(emphasis added); *Magwood*, 561 U.S. at 331 (“Defendant’s application challenging that new Judgment cannot be second or successive such that § 2244(b) would apply.”) (internal quotations omitted)(emphasis added).

The trial Court’s resentencing Petitioner to a new condition he now must serve in confinement is a “new Judgment.” *Murphy v. United States*, 634 F. 3d 1303, 1311 (11th Cir. 2011). “A new Judgment resets the Statute of Limitations clock and a Petitioner may challenge both the underlying conviction and the resentencing.” (emphasis added) *Ferreira v. Sec’y Dep’t of Corr.*, 494 F. 3d 1286, 1293 911th Cir. 2007). “[W]hen a petitioner is resentenced after AEDPA’s one-year Statute of Limitations has expired for the original Judgment of conviction and sentence, the Judgment entered upon resentencing constitutes a new Judgment holding the Petitioner in Confinement.”

Petitioner’s case and the Eleventh Circuit Court of Appeals holding in *Insignares* are alike.

Mr. Insignares minimum mandatory sentence from 20 years reduced to 10 years and otherwise leaving his convictions and remaining sentence intact was a new Judgment and sentence, thus his Habeas Corpus Petition was not successive, second or untimely, but his first Habeas Corpus Petition under the new Judgment and sentence. See *Id.*

As a result of the State Court’s Order on *Mr. Insignares* Motion to Correct Illegal Sentence 3.800(a), *Mr. Insignares* has a shorter minimum mandatory sentence, but his total custodial sentence of 27 years remained the same.

Mr. Insignares filed his first Habeas Corpus Petition on § 2254 under the new Judgment and sentence, applying the Supreme Court’s decision in *Magwood*, the District Court determined that *Mr. Insignares* habeas petition was not second or successive, but timely and subsequently denied on the merits. See *Id.*

Petitioner as like *Insignares*, filed a Habeas Corpus Petition under the new Judgment and sentence. The only meaningful distinction was *Insignares* was considered not second or successive but timely and merits considered. Petitioner was dismissed as untimely and the merits were not considered. But the point of law and basic principles are alike. Petitioner objected to the Magistrate’s Report and Recommendation and timely appealed to the Eleventh Circuit Court of Appeals, subsequently denied.

This Honorable Court stated a “basic principle of justice [is] that like cases should be decided alike.” *Martin v. Franklin Capital Corp*, 546 U.S. 132, 139 (2005). The Eleventh Circuit Court of Appeals in *Cf. Murphy v. U.S.*, 634 F. 3d 1303, 1314 (11th Cir. 2011) (stating that a resentencing occurs “where an old sentence is invalidated and replaced with a new one.”)

Common sense shows where a new intervening Judgment and sentence is modified after the one-year Statute of Limitations expires, its not successive, second or untimely when a new Judgment, sentence or condition has changed in a defendant's case he must serve in confinement.

This Honorable Court should grant Writ of Certiorari based on precedent authority and basic common law principle of justice.

QUESTION PRESENTED

WHETHER PETITIONER'S RIGHT TO EQUAL PROTECTION AND DUE PROCESS GUARANTEED BY THE FOURTEENTH AMENDMENT WAS VIOLATED WHEN THE PRINCIPLE THAT "SIMILARLY SITUATED DEFENDANTS" MUST BE TREATED THE SAME?

Equal protection in the United States law, the constitutional guarantee that no person or group will be denied the protection under the law that is enjoyed by similar persons or groups. In other words, persons similarly situated must be similarly treated.

Equal protection is extended when the rules of law are applied equally in all like cases and when persons are exempt from obligations greater than those imposed upon others in like circumstances.

Due process, in the United States law, the constitutional guarantee that no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; due process under the Fourteenth Amendment can be broken down into two categories: procedural due process and substantive due process. Procedural due process based on principles of "Fundamental Fairness" addresses when legal procedures are required to be followed in criminal proceedings. Substantive due process, although also based on

principles of “Fundamental Fairness,” is used to evaluate whether a law can be applied by States at all, regardless of the procedure followed.

Due process requires that the procedures by which laws are applied must be even handed so that individuals are not subjected to the arbitrary exercise of government power. A basic threshold issue respecting whether due process is satisfied is whether the government conduct being examined is a part of a criminal proceeding and if so, the appropriate framework for assessing procedural rules in the field of criminal law is determining whether the procedure is offensive to the concept of fundamental fairness.

This Court held before a prisoner seeking postconviction relief under § 2254 may appeal a District Court’s denial or dismissal of the petition, he must first seek and obtain a COA from a Circuit Justice or Judge, § 2253. This is a jurisdictional prerequisite. A COA will issue only if § 2253’s requirements have been satisfied, when a habeas applicant seeks a COA, the Court of Appeals should limit its examination to a threshold inquiry into the underlying merit of his claims. *Slack v. McDaniel*, 529 U.S. at 481. This inquiry does not require full consideration of the factual or legal bases supporting the claims. Consistent with this Court’s precedent and the statutory text, the prisoner need only demonstrate “a substantial showing of the denial of a constitutional right.” § 2254(1)(2). He satisfies this standard by demonstrating that jurists of reason could disagree with the District Court’s

resolution of his case or that the issues presented were adequate to deserve encouragement to proceed further. He need not convince a Judge, or, for that matter, three Judges, that he will prevail, but must demonstrate that reasonable could conclude that the Court's abuse of the writ holding was wrong or debatable. *Miller-El v. Cockrell*, 537 U.S. 322, 342 (2003).

Petitioner states this Court has repeatedly explained that stare decisis 'promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process.' *Payne v. Tennessee*, 501 U.S. 808, 807 (1991). The doctrine "permits society to presume that bedrock principles are funded in the law rather than in the proclivities of individuals, and thereby contributes to the integrity of our constitutional system of government, both appearance and in fact." *Vasquez v. Hillery*, 474 U.S. 254, 265-266 (1986).

Petitioner was denied due process when he was denied a COA to further his claim that when there is a intervening Judgment and sentence the one-year Statute of Limitations restarts. The Eleventh Circuit Court of Appeals denied Petitioner further review, which like other defendants were granted a COA. Petitioner believes this Court should grant Certiorari and this case is ripe to address this issue. Where a jurist of reason can debate this issue, then a COA must be granted for a closer look at the issue. And this Honorable Court should grant such.

CONCLUSION

For the foregoing reasons, Eddie Montero, Petitioner, pro se, prays that this Honorable Court grant a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit.

Respectfully submitted,



Eddie Montero # 194753

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document was placed in prison officials hands for mailing via U.S. Postal Service to: Supreme Court of the United States, One First Street, N.E., Washington, D.C. 20543 on this 21st day of May, 2020.



Eddie Montero # 194753
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